

COURTS: Enviros launch campaign to derail Alito nomination

Major environmental groups today announced their opposition to the nomination of Judge Samuel Alito to the Supreme Court -- the first campaign by environmentalists in almost two decades against a nominee to the high court.

The environmental groups -- which include the Sierra Club, Earthjustice, Friends of the Earth, National Environmental Trust and Greenpeace -- will join a growing list of left-leaning organizations that have come out against the nominee and plan to stage massive lobbying and public relations efforts to block him.

Representatives from the groups said in a Capitol Hill press conference that their opposition revolved largely around Alito's ruling on cases relating to congressional authority and access to courts -- issues that have topped environmentalists' concerns in recent fights over the courts.

Environmentalists have repeatedly said that are "very concerned" about how Alito would rule on congressional authority under the Commerce Clause, due in large part to a dissent in the 1996 *U.S. v. Rybar* in the 3rd Circuit Court of Appeals. He argued in that case the Constitution did not give the government authority to regulate sales of machine guns that do not cross state lines.

While that case had nothing to do with environmental regulations, environmental advocates have said the ruling demonstrates that Alito may seek to severely limit congressional authority on other laws once he is on the Supreme Court. "He is willing to draw rather arbitrary lines of where congressional authority is limited," Sierra Club attorney David Bookbinder said.

Another area of Alito's record cited by environmentalists is that Alito joined in a 2-1 decision in *PIRG v. MEI*, in which the 3rd Circuit threw out a \$2.6 million fine against a manufacturing company because it determined the environmental groups that brought the case did not have standing ([Greenwire](#), Nov. 1).

"It is our concern that Judge Alito will take this very narrow view of access to courts to the Supreme Court and join what is now an anti-environmental minority," said Sara Zdeb, legislative director for Friends of the Earth.

Environmentalists expressed similar worries on the Commerce Clause and legal standing issues during nomination proceedings for current Supreme Court Chief Justice John Roberts, but even after the hearings the groups said they did not have enough information about his record to either oppose or endorse the nomination. This time around however environmental groups said that Alito's lengthy tenure on the federal bench has already given them enough information to determine that he would be a threat to environmental laws if confirmed to the Supreme Court.

"Sam Alito is no John Roberts, Sam Alito has a record far exceeding John Roberts," Bookbinder said. "He has a track record of going out there and laying down his marker on how he views the Constitution."

The last Supreme Court nomination to be widely opposed by environmental groups was President Reagan's 1987 selection of Robert Bork, who is also the last nominee to be defeated by the Senate.

Earthjustice Attorney Glenn Sugameli also said another reason the groups have decided to get involved is because of the Supreme Court's movement toward legal positions that environmentalists say would undermine environmental laws. "One of the real issues we're dealing with here is that the court is dangerously near a tipping point," Sugameli said.

It remains to be seen whether the concerns raised by environmentalists will be a significant factor in the nomination fight, as abortion and various social-policy issues have thus far dominated the debate over Alito's record. The groups said their chief priority in the short-term will be to educate senators on Alito's position on environmental issues and to work with other groups to put pressure on undecided senators to oppose the nomination.

Bookbinder said however the groups will not immediately call for a filibuster of the nomination, saying instead it will simply focus on making its cases against the nomination and not vote strategy. "We are not using the word filibuster right now," he said. "Right now our job is to convince senators that Sam Alito does not belong on the Supreme Court."

Meanwhile, many business interests -- including groups such as the National Association of Manufacturers -- have already thrown their support behind the Alito nomination, arguing that he has demonstrated the kind of judicial stability in his rulings that businesses need to rely on.

"Judge Alito has a long record of many different views and decisions and, frankly, to have a judge like Chief Justice Roberts as well who has some understanding of the business community can be a very positive thing," said energy industry lobbyist Frank Maisano. "It has a positive impact of when a judge has an understanding of business community and how it operates."

But Maisano also said that he saw little possibility that the concerns raised by environmentalists or other issues in the business arena will be a significant factor in the nomination. "They're weighing in because they want to weigh in, but I think these are minor issues compared to the judge's experience, his record ... and the social issues that always dominate," he said.